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Summary record of the 181st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 5 October 2016, at 10 a.m.

Chair: Mr. Huhle (Vice-Chair)

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Bosnia and Herzegovina (continued) (CED/C/BIH/1; CED/C/BIH/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Bosnia and Herzegovina took places at the Committee table.*

2. **Ms. Galvis Patiño** (Country Rapporteur) said that she would welcome additional information on the reasons for imposing expulsion that were provided for under the Law on Movement and Stay of Aliens and Asylum, and invited the delegation to give examples of cases in which those reasons had been cited.

3. She requested details of the criteria for evaluating the risk that a person might be subjected to enforced disappearance and asked whether the authorities had ever refrained from expelling, returning, surrendering or extraditing a person because of such a risk.

4. The delegation should elaborate on the three-stage protection mentioned in paragraph 53 (c) of the State Party's replies to the list of issues (CED/C/BIH/Q/1/Add.1). It would also be useful to know whether expulsion, return, surrender or extradition decisions could be appealed and, if so, before which authority and under what procedure. Did appeals have suspensive effect? She asked why foreigners who did not cooperate or for whom a travel document could not be obtained must be placed under supervision for up to 18 months and then released. She also wished to know whether the safeguards outlined in paragraphs 57 and 58 of the replies to the list of issues amounted to a prohibition of secret detention and, if so, whether there were court decisions confirming that prohibition.

5. The Committee would appreciate information on how the provision that custody should be imposed for the shortest necessary time was applied in practice and what had been the longest period imposed. She also asked what measures had been taken to ensure that the Ombudsman's Office had sufficient financial, human and technical resources to enable it to carry out its functions effectively and independently.

6. She invited the delegation to comment on the statement that no complaints had been filed in relation to the registration of persons deprived of their liberty. Lastly, she wished to know whether the State party intended to provide specific training on the content and implementation of the Convention to civil and military law enforcement personnel, medical personnel, public servants and any other persons who might be involved in the custody or treatment of persons deprived of their liberty, and in particular to members of the police, the judiciary and migration authorities.

7. **Mr. Corcuera Cabezut** (Country Rapporteur) said that he would appreciate confirmation that the definition of "injured party" in national law covered the relatives of victims of enforced disappearance, and asked whether any further amendments to domestic legislation were necessary for the purposes of compliance with article 24 (1) of the Convention. He asked the delegation to clarify how the anonymization of court decisions and other documents available to the public was compatible with the State party's obligation under article 18 of the Convention.

8. He requested an update on efforts to conclude the agreement on the Fund for Support to the Families of Missing Persons. Noting that the agreement appeared to provide only for economic compensation, he asked what steps had been taken to adopt a national programme on measures of reparation for relatives of victims of enforced disappearance that included not only compensation but also restitution, rehabilitation, satisfaction and guarantees of non-repetition.

9. He wished to know whether any progress had been made in drafting and adopting a bill on the rights of victims of torture, and whether there were any plans to enact specific legislation concerning victims of enforced disappearance. What progress, if any, had been made in eliminating discrepancies and discrimination in access to, and levels of, social benefits and other measures of social support? Did entitlement to social allowances remain conditional on obtaining a declaration of death for victims of enforced disappearance?

10. The delegation should describe whether and how the State party intended to harmonize domestic legislation with the Convention in the area of social welfare, and clarify whether measures had been taken to amend article 27 of the Law on Missing Persons to ensure that there was no automatic declaration of death of persons whose names were entered in the Central Record on Missing Persons. Had the Ministry of Health and Social Welfare provided any information or answers since the submission of the replies to the Committee?

11. The delegation should comment on reports that the fragmented and discriminatory nature of the framework for free legal aid, coupled with the risk of disclosure of the identities of protected witnesses, hampered access to compensation for the majority of victims of enforced disappearance.

12. With regard to the wrongful removal of children who were victims of enforced disappearance, and noting the proposed text of article 198 (b) of the Criminal Code of the Republika Srpska, he asked whether any other proposals in line with article 25 of the Convention had been submitted to legislative bodies at any level. Lastly, the delegation should provide a more detailed response to the questions in the list of issues concerning adoption or placement of children that originated in an enforced disappearance.

13. **Mr. Decaux** said that he wished to know whether all persons charged with a criminal offence were entitled to the free assistance of an interpreter if they could not understand or speak the language used during questioning, as required by the European Convention on Human Rights, and whether unaccompanied minors and other vulnerable groups had minimum rights beyond those enshrined in article 53 of the Code of Criminal Procedure of the Republika Srpska.

14. **Mr. Al-Obaidi** asked whether the State party cooperated with other countries in order to share the experience that it had gained with regard to the use of mass graves. Noting that the State party had ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), he also asked whether, when dealing with migration flows in recent years, the competent authorities had taken into account the link between human trafficking and enforced disappearance.

15. **Mr. Hazan** said that he wished to know whether the proposed text of article 198 (b) of the Criminal Code of the Republika Srpska had been adopted. The language of the proposal was in some ways restrictive and might therefore limit the number of prosecutions. He asked what was being done to locate and identify the 94 children who were still unaccounted for following the occupation of the United Nations safe area in Srebrenica and to provide assistance to their families.

16. **Mr. López Ortega** asked whether the obligation to keep records of persons deprived of their liberty was imposed on all places of detention, including juvenile detention centres, psychiatric hospitals, immigration centres, barracks and other military facilities. He said that he wished to know which authority was responsible for monitoring compliance with that obligation, how often inspections were conducted and what they involved, what punishments were prescribed for non-compliance, and whether wilful non-compliance was a criminal offence.

17. **Mr. Yakushiji** said that he would be grateful to receive information on the number of cases, since the establishment of the Service for Foreigners' Affairs, in which the principle of non-refoulement had been invoked during expulsion proceedings because of a fear of being subjected to enforced disappearance. In how many cases in recent years had the principle been invoked for the same reason during extradition proceedings? And in how many of all those cases had the principle actually been applied? He also wished to know whether the Law on International Assistance in Criminal Matters applied to both expulsion and extradition proceedings, whether invoking the principle of non-refoulement under article 91 of the Law automatically triggered the procedures provided for in articles 105 to 138 of the Law and, if so, whether expulsion proceedings were suspended until the grounds for invoking the principle had been verified. In that connection, he asked whether and how individuals were given the opportunity to express a fear of being subjected to enforced disappearance, and whether members of the Service for Foreigners' Affairs received training in that regard. Lastly, he wished to know whether foreigners who were placed under supervision for up to 18 months before being released were subsequently allowed to remain in the State party or were deported to their country of origin or to a third country. Any statistics in that respect would be appreciated.

The meeting was suspended at 10.30 a.m. and resumed at 10.50 a.m.

18. **Mr. Sarač** (Bosnia and Herzegovina) said, with regard to the principle of non-refoulement, that the provisions of the 1951 Convention Relating to the Status of Refugees and its Protocol had been incorporated into the Constitution of Bosnia and Herzegovina and its legislation on the entry and stay of aliens. At the national level, two institutions were responsible for the administration of the entry and stay of foreigners: the Service for Foreigners'Affairs and the Asylum Department, both under the Ministry of Security. Foreigners entering Bosnia and Herzegovina could file applications for asylum at the border, invoking the 1951 Convention, following which they would be placed in a centre for asylum seekers.

19. All procedures to guarantee non-refoulement and subsidiary protection were respected during the consideration of asylum applications. In the event that the application was rejected, free legal aid was provided for the applicant and if he or she wished to seek international protection, proceedings could be instituted in the administrative court to overturn or postpone the expulsion decision. If the court found grounds to substantiate the claim under the principle of non-refoulement, the expulsion procedure would be halted.

20. Regarding the protection of rights during the expulsion procedure, asylum applicants could file complaints of human rights violations before the Constitutional Court. The Constitutional Court could issue an injunction to prohibit the expulsion of the individual. All asylum cases were considered from the perspective of the applicant's situation in Bosnia and Herzegovina and in the country of origin.

21. **Mr. Bulić** (Bosnia and Herzegovina), responding to the Committee's questions on detention, said that the guarantees and safeguards required under article 17 of the Convention were in place, and that all procedures related to detention and deprivation of liberty in Bosnia and Herzegovina were in full compliance with article 5 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. All guarantees to prohibit secret detention were strictly applied. A range of measures were in place to ensure that the defendant was present during legal proceedings; pretrial detention was a last resort. In all cases, the accused would be asked whether he or she had any complaints with regard to the conduct of the arrest, and when taken into custody would be given the opportunity to inform his or her family of the arrest and place of detention. The presence of a lawyer was obligatory; suspects must be made fully aware of the reasons for their detention and the charges against them.

22. The court would ensure the full application of article 5 of the European Convention on Human Rights, the judge in the preliminary hearing would supervise proceedings, and a judicial panel would review the pretrial detention order every two months. If required by the prosecution, short-term pretrial detention orders could be issued, to ensure that the accused was present for procedures that could not be conducted if he or she was at liberty. Each motion of the prosecutor and decision of the court must be cited in the case records required under article 17 of the Convention. The accused's family would always be informed of his or her whereabouts and the reasons for detention. Regarding the detention of foreigners, interpreters were provided as matter of course after first contact with the individual during his or her arrest. The arrested person's national embassy or consular service would be immediately informed of the arrest.

23. **Ms. Đuderija** (Bosnia and Herzegovina) said that the budget for the Ombudsman's Office had been reduced in the context of a general reduction in the State budget, rather than as a result of a specific decision to reduce funds to that particular office. Additional resources had been requested to enable the Ombudsman's Office to fulfil its functions with regard to monitoring places of detention. That request had been submitted to the Ministry of Finance for its consideration. A parliamentary decision would be issued, and if the additional resources were granted, a new law would need to be passed to that effect.

24. While there was no explicit definition of "victim of enforced disappearance" in national law, the Law on Missing Persons defined family members of missing persons as dependants and members of the immediate family and household of the missing person. The Fund for Support to the Families of Missing Persons in Bosnia and Herzegovina had been the subject of several rulings by the Constitutional Court. It had not been established, however, since it required the support of all entity governments. The needs of the families of missing persons were currently being met by the relevant entity and cantonal governments.

25. A federal law on reparation had not yet been adopted; reparation was currently addressed in a rather fragmented manner. Comprehensive, integrated legislation was being considered, which would entail a new administrative model that must be approved by governments at the national, entity and district levels. Under the current system, families of missing persons received minimal social welfare benefits. Implementation of a new law on reparation would constitute a considerable financial burden on the State. Compensation and reparation were defined and applied differently in different pieces of legislation; a harmonized definition of the right to compensation was still pending. There was no plan to amend article 27 of the Law on Missing Persons; the automatic registration of presumed deaths meant that legal cases no longer needed to be filed, and families were automatically entitled to social welfare.

26. When a child was reported missing, an investigation would be initiated, and if a link was established with trafficking in persons, a report would be filed in the Interpol database. All personal and other information about the child in question would be provided to Interpol, in line with the State's obligations in that regard. Some provisions were in place for cooperation with other countries in the investigation of such cases, but such cooperation remained underfunded.

27. Detention in psychiatric hospitals, juvenile detention institutions and other detention institutions was subject to assessment of the detainee's psychological and physical health. Detainees' records were kept in accordance with the law. Each detainee was assigned to a social worker, who monitored their situation.

28. **Ms. Mešić** (Bosnia and Herzegovina) said that the records of persons deprived of their liberty were kept in written and electronic form by the competent authorities of the Ministry of Justice. The Department of Internal Control was responsible for entering and

protecting those personal data, which could also be reviewed by authorized representatives of the Department of Planning, Analysis, Cooperation and Information and the Agency for the Protection of Personal Data. Records were regularly updated. Police officers received information on international law and human rights during their initial training, as well as other specialized training, for example on the structure of the police forces in Bosnia and Herzegovina, but they received no specific training on the Convention.

29. **Ms. Bašić** (Bosnia and Herzegovina) added that by law, accurate and regularly updated registers of all detained persons must be kept; those records could be inspected at any time by authorized officials of the Ministry of Justice, in response to a specific request or in the course of their normal duties. Failure to keep accurate records of detainees was an offence under the provisions of the Criminal Code related to misconduct by a civil servant or actions or omissions that caused harm to another person. Draft national legislation on free legal aid for victims in criminal proceedings had been prepared in 2008 but had not yet been enacted, although the House of Representatives had recently approved an updated draft law; once the House of Peoples did likewise, it would enter into force. There were, however, legal aid systems in the cantons and the Republika Srpska. A draft law on disappearance of children was still being prepared, to incorporate the provisions of article 25 of the Convention into national and state legislation.

30. **Ms. Galvis Patiño** said that she would appreciate more information on the number of decisions related to asylum seekers where the issue of non-refoulement had been cited, in particular with regard to the risk of enforced disappearance if the individual was deported, and on the final outcomes of those cases. She also asked what training in the provisions of the Convention was provided not only to the police but also to other authorities, such as migration officials, judges, prosecutors and medical personnel.

31. **Mr. Corcuera Cabezut**, noting the delegation's reply concerning the funding of the Ombudsman's Office, said that he remained concerned that the Ombudsman did not control his own budget, which could compromise the Office's independence and leave it open to political interference, especially at a time when the Office required increased funding to meet its growing responsibilities.

32. He welcomed the State party's intention to amend its legislation to bring it into full conformity with the Convention but wondered whether work in that regard had begun and if so, how much progress had been made; had draft legislation been prepared, were reforms before the Executive or Parliament? He likewise requested information on progress made at the political level among the various parties to establish the Fund for Support to the Families of Missing Persons, adopt a law on reparations, resolve the administrative and jurisdictional problems created by the federal nature of the country, and bring legislation related to missing children, in particular, into conformity with article 25 of the Convention. He also wondered if any progress had been made toward amending article 27 of the Law on Missing Persons so that there would be no automatic declaration of death for persons whose names were entered in the Central Records of Missing Persons, while still guaranteeing family members rights in such areas as welfare, financial matters, family law and property. Such measures should not, however, prevent full investigation of all cases to ascertain the fate of the persons concerned.

33. **Mr. Yakushi** said that he would appreciate more information on the legal system related to asylum and expulsion, including the number of cases and examples showing how the system functioned in practice. He wondered whether any problems had been identified with current procedures.

34. **Mr. Decaux** asked what progress had been made towards the establishment of a national preventive mechanism for the prevention of torture, as called for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment. Such a mechanism would play an important role in combating torture at the national level and in coordinating with international mechanisms, including the Subcommittee on Prevention established pursuant to the Optional Protocol.

35. **Mr. López Ortega** said that he welcomed the State party's efforts to bring its legislation and procedures into conformity with articles 17 and 18 of the Convention, article 5 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, in particular with regard to a detainee's right to legal counsel immediately upon detention and to notification of his or her family about the detention and the reason for that detention. He wondered how information about a detainee was conveyed to family members; was it by telephone or in writing, for example? He also asked whether family members were told the place of detention and were informed of any transfers of the detainee to another place of detention.

36. **Mr. Sarač** (Bosnia and Herzegovina) said that he had no statistics on the number of cases or decisions related to asylum, and in particular of cases involving non-refoulement due to risk of enforced disappearance. There had been cases where a removal order had been stayed by the Constitutional Court or the European Court of Human Rights pending further review, but in all cases the decision of the authorities of Bosnia and Herzegovina had been upheld. His Government had therefore never violated the principle of non-refoulement owing to the risk of enforced disappearance upon return. Foreign nationals who were unlawfully in national territory or who posed a risk to national security could be deported under the authority of the Service for Foreigners' Affairs, following review of their situation. Such decisions could be reviewed and revoked, including on grounds of non-refoulement. At all stages of the deportation process, the detainee was guaranteed the right to international legal safeguards, including free legal counsel and the right to use the language of his or her choice.

37. **Ms. Đuderija** (Bosnia and Herzegovina) said that the budgetary procedure in the State party was public and transparent in nature. A multi-annual budgetary planning system had been adopted for all State bodies. The Ombudsman's Office enjoyed functional independence and must submit funding requests to the Ministry of Finance and Treasury, which reviewed and transmitted them to the Council of Ministers for consideration and subsequent communication to Parliament and the Office of the President. The budget of the Ombudsman's Office had neither been cut nor increased: no extra financial support had been provided for its additional functions, such as work to combat discrimination under the Law on the Prohibition of Discrimination. The national preventive mechanism currently formed part of the Ombudsman's Office, and a bill further clarifying the relationship between the two bodies was being developed.

38. Legislative amendments were being prepared related to the definitions of "victim" and "injured party" in the context of enforced disappearances, along with amendments concerning social welfare and the Fund for Support to the Families of Missing Persons. It was the various political entities, rather than the national authorities, who implemented the Fund. The Fund had been set up as a part of the transitional justice process, in order to enable intercommunal cooperation between families of missing persons belonging to different ethnic groups. That process implied the harmonization of existing legislation on the declaration of death of missing persons.

39. The Institute for Missing Persons had set up an advisory board to make proposals related to the search for missing persons. The courts were responsible for declarations of death, and families could obtain the documents they required in order to exercise their rights and enjoy their entitlements. The domestic legislation in that regard was aligned with the Convention. The Ministry for Human Rights and Refugees of Bosnia and Herzegovina was currently preparing a bill providing a framework for basic rights at the national level. Efforts were ongoing to transpose the provisions of the International Convention for the

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Protection of All Persons from Enforced Disappearance, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a number of other international human rights instruments into national law. However, that process was complicated by the existence of a large number of political entities within the State party. Planned legislation on the prohibition of torture would address the issues of reparation, the culture of memory, forms of protection, and prevention of discrimination on the basis of ethnic origin.

40. **Mr. Bulić** (Bosnia and Herzegovina) said that a body had been set up which had unlimited access to detainees from the very moment of deprivation of liberty and which promptly informed their families of their whereabouts. Detainees could contact their relatives by telephone, subject to the rules of the detention facility at which they were being held. Written records were kept of all prisoner and detainee transfers. All the provisions of article 17 of the Convention were fully complied with in the State party. Persons under investigation were held separately from convicted prisoners.

41. **Ms. Bašić** (Bosnia and Herzegovina) said that amendments to the Criminal Code of Bosnia and Herzegovina criminalizing offences under article 25 of the Convention were currently being prepared. Two training centres for judges and prosecutors had been set up. Police officers and members of the armed forces selected to take part in peacekeeping missions received training on international law and all the international instruments to which Bosnia and Herzegovina was party. A proposal would be put forward on the inclusion of information on the Convention in training programmes for judicial officials and medical personnel.

42. **Mr. Corcuera Cabezut** said that the State party was to be congratulated on its declaration under article 31 of the Convention recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation of provisions of the Convention. The delegation of Bosnia and Herzegovina had adopted an extremely open and constructive approach to the interactive dialogue with the Committee, which had covered a wide range of issues, including legislative measures for the implementation of the Convention, the criminalization of enforced disappearance, both as a crime against humanity and as an autonomous criminal offence, the adoption of judicial measures, procedural safeguards designed to prevent enforced disappearance, international cooperation, the protection of asylum seekers, reparations, the right to truth and information, protocols related to the search for human remains, and child victims of enforced disappearance.

43. **Ms. Galvis Patiño** said that she was grateful to the delegation for its comprehensive and detailed answers to the Committee members' questions.

44. **Mr. Sarač** (Bosnia and Herzegovina) said that the examination of the initial report of Bosnia and Herzegovina had awoken memories of the country's recent history. Despite the complex constitutional situation in the State party, efforts were being made to avoid repeating past mistakes and to build a democratic society. The Committee members had displayed an impressive understanding of the current situation in Bosnia and Herzegovina. The State party was fully committed to continuing cooperation with the Committee in the future.

45. **The Chair** said that the interactive dialogue with the delegation had been extremely constructive and hoped that it would be of use to the State party in its efforts to improve the human rights situation at the national level.

The meeting rose at 12.25 p.m.